

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ROBERT FITZGERALD ADAMS,
Plaintiff

vs

UNITED STATES OF AMERICA,
Defendant

Case No. 1:11-cv-306

Weber, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION

Plaintiff Robert Fitzgerald Adams, an inmate at the United States Penitentiary in Atlanta, Georgia, filed a motion for return of personal property pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure seeking return of items seized by agents during the course of the investigation of his criminal case. *See U.S. v. Adams*, Case No. 1:10-CR-31-001 (Doc. 109). Because the criminal proceedings in Mr. Adams' underlying criminal action had already been terminated, the Court directed the Clerk of Court to open a new civil action captioned *Robert F. Adams v. United States of America* and file a copy of his motion in the new civil action. (Doc. 1). The Court's Order noted that the new civil action is subject to the filing fee provisions of the Prison Litigation Reform Act. *See 28 U.S.C. §§ 1915(a) & (b)*. Therefore, the Court ordered Mr. Adams to submit an application and affidavit to proceed without prepayment of fees and a certified copy of his trust fund account statement (or institutional equivalent) or pay the full filing fee within sixty (60) days. (Doc. 1).

To date, more than sixty (60) days later, Mr. Adams has failed to comply with the Court's Order to submit an application and affidavit to proceed without prepayment of fees and a certified copy of his trust fund account statement (or institutional equivalent) or pay the full filing fee.

District courts have the inherent power to *sua sponte* dismiss civil actions for want of

prosecution to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962). *See also Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991). Failure of a party to respond to an order of the court warrants invocation of the Court’s inherent power. *See Fed. R. Civ. P. 41(b)*. Accordingly, dismissal is appropriate.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff’s case be **DISMISSED** with prejudice for lack of prosecution.
2. The Court certify pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of this Court’s Order would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997).

Date: 7/19/2011



Karen L. Litkovitz
United States Magistrate Judge

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NOTICE REGARDING FILING OF OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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1. Article Addressed to:

Robert Fitzgerald Adams
#05048-661
US Penitentiary
PO Box 150160
Atlanta, GA 30315

A. Signature

X Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

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